IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14143 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KESHARAM S/O. RAMAKISHAN VISHNOI (DETENU) THRO.UNCLE

Versus

DISTRICT MAGISTRATE BANASKANTHA

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Appearance:

1. Special Civil Application No. 14143 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against the detenu by the District Magistrate, Palanpur on 12.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the detenu and placed on record reveal that the detaining authority placed reliance on the papers of registration of crimes against the detenu on 3.5.2003 under sec. 66B, 65A&E, 81, 98, 99 and 116(2) of the Bombay Prohibition Act, whereby it is alleged that foreign liquor i.e. Beer bottle in Box worth of Rs. 8,30,000/- was recovered from the possession of the detenu and from the above material the order impugned came to be passed.

Heard ld. advocate Mr. Kamen Shukla for Mr AS Dave for the petitioner and Ms. Panchal ld. AGP for the respondents at length.

Out of various contentions raised and controverted on behalf of the respondents, the matter can be disposed of on the ground whether the detaining authority applied its mind to the vital aspect of the mater. The grounds placed on record clearly indicates that when the order came to be passed against the petitioner and served upon him, the investigation was in progress in respect of crimes registered against the detenu as referred above. In this respect, the detaining authority came to the conclusion that on completion of investigation of the above cases, the detenu was likely to prefer bail application before the competent court and after releasing on bail, the detenu was likely to continue his bootlegging activities so as to be prejudicial to the maintenance of public order. The grounds revealed that the detaining authority took into consideration the papers of investigation in the above said crime registered against the detenu. From this material, it could not be found that the detenu was likely to file an application for bail and was likely to be released on bail by the court competent. Therefore, this is a case where the detaining authority did not apply its mind to the vital aspects of the matter so as to vitiating the order of detention. There was no material before the detaining authority to reach to the subjective satisfaction that the detenu was likely to file an application for bail and was likely to be released on bail and on so releasing, he was likely to continue his bootlegging activities. The facts of this case are squarely covered by a decision of the Apex Court in the matter of Amrutlal and others vs. Union

Government through secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. The order impugned is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 12.5.2003 by the District Magistrate, Palanpur under the PASA Act against the detenu is quashed and set aside. The detenu- Kesharam s/o. Ramakishan Vishnoi is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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